

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
PUGET SOUND BY-PRODUCTS,
A DIVISION OF DARLING DELEWARE
CORPORATION,

Appellants,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 79-194

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 9.11(a) of respondent's Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington presiding and Chris Smith, at a formal hearing in Tacoma, Washington, on February 29, 1980.

Appellant was represented by its attorney Keith D. McGoffin; respondent was represented by its attorney, Randall L. St. Mary.

1 Having heard the testimony, having examined the exhibits, and
2 having considered the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
6 certified copy of its Regulation I and amendments thereto which are
7 noticed.

8 II

9 The appellant, Puget Sound By-Products, operates an animal
10 by-product rendering plant, utilizing dead animals and meat scraps
11 from restaurants and packing houses to produce bone meal, tallow and
12 other marketable products. Animal material to be rendered is brought
13 to the plant by truck and is transferred to an open air loading
14 platform. The material is usually moved quickly from the loading
15 platform into cookers in the rendering plant, but on September 27,
16 1979, there was a partial breakdown in the plant which caused animal
17 material to remain on the loading platform much longer than usual.

18 III

19 On September 27, 1979, at about 4:00 p.m. in response to a
20 complaint from an employee of U. S. Oil, respondent's inspector
21 visited the premises of the oil company where he smelled a strong
22 disagreeable odor. The inspector traced the odor and determined that
23 it came from the stockpile of animal bodies, bones and meat refuse
24 which had accumulated on appellant's loading dock as a result of the
25 partial breakdown in the rendering plant.

26 The inspector described the odor as being uncontrolled,

1 disagreeable and obvious. The complaining witness, described the odor
2 as he smelled it while working on the premises of U. S. Oil as being,
3 a bad smell - a horrible smell - a nauseating smell.

4 Before leaving appellant's premise, the inspector issued a notice
5 of violation of respondent's Section 9.11(a). Thereafter appellant
6 was issued a \$250 civil penalty which is the subject of this appeal.

7 IV

8 Respondent used no instrument to measure the odor, but relied upon
9 the sense of smell of the complainant and the inspector, which is a
10 recognized and proper method of determining whether or not an odor
11 violates air contaminant regulations.

12 V

13 The appellant's manager said he did not notice any odor coming
14 from the animal material on the loading platform. He testified that
15 the odor smelled by the complainant and the inspector may have come
16 either from the sewer plant of the City of Tacoma, located 1/2 mile
17 southwesterly of U. S. Oil, or from the rendering plant of Alaska
18 Commodities located about 1-3/4 miles northwesterly of U.S. Oil. He
19 stated that when he observed the wind that it was not coming from a
20 southwesterly direction as testified by the inspector and the
21 complainant, but instead was coming from the north and blowing to the
22 south. He contended that his observation of wind direction was borne
23 out by a telephone call he had had with the U. S. Weather Service. He
24 testified that he was told the wind was south at 18 knots. It is
25 obvious from his testimony that he believed this meant that the wind
26 was blowing from a southerly direction.

1 The appellant moved that the Board take notice of the U. S.
2 Weather Service records for September 27, 1979. There being no
3 objection from the respondent the motion was granted and notice was
4 taken.

5 The Board in actually taking notice of U. S. Weather records for
6 the Tacoma area, determined that weather observations and records are
7 kept by two United States Agencies, the U.S. Air Force Weather Service
8 with an observation station at McChord Air Force Base about 8 miles
9 southerly from appellant's plant, and the U. S. Weather Service with
10 an observation station at Sea-Tac Airport about 14 miles northerly of
11 appellant's plant.

12 The Board finds that the records from both McChord Air Force Base,
13 and Sea-Tac show that from 9:00 a.m. to 5:00 p.m. P.D.S.T. on
14 September 27, 1980, that the wind varied in direction from southerly
15 to southwesterly and was blowing generally toward the northeast. At
16 Sea-Tac the wind varied from time to time between compass bearings 180
17 degrees and 230 degrees and at McChord Field between compass bearings
18 180 degrees and 280 degrees.

19 The Board determined from the preponderance of the evidence that
20 during the times the complainant and the respondent's inspector were
21 smelling the odor at the site of U. S. Oil the wind was blowing from
22 the direction of appellant's rendering plant.

23 The Board also determined from the preponderance of the evidence
24 that the odor complained of came from the animal material piled on
25 appellant's loading platform which consisted of animal carcasses,
26 bones and waste meat products, and that it persisted from before noon

1 until late in the day.

2 V

3 The Board finds by the preponderance of the evidence that the odor
4 smelled at the U. S. Oil site, described by the complainant as being
5 "bad" - "nauseating" - "horrible," and which was disagreeable enough
6 to cause him to register a complaint with the respondent, was a
7 sufficiently disagreeable and noxious odor of sufficient duration to
8 unreasonably interfere with the enjoyment of life and property by
9 causing an unreasonable and substantial discomfort and annoyance to
10 persons of ordinary and normal sensibilities.

11 VI

12 The respondent knew on September 27, 1979, that a breakdown had
13 occurred in its plant, that it was only partially operable, that
14 animal refuse which was giving off a noxious odor was piling up on the
15 loading platform, and that a wind was blowing which would carry the
16 noxious odor to the property of others.

17 VII

18 Any Conclusion of Law which should be deemed a Finding of Fact is
19 hereby adopted as such.

20 From these Findings the Board comes to these

21 CONCLUSIONS OF LAW

22 I

23 The Board has jurisdiction over the persons and over the subject
24 matter of this proceeding.

25
26 FINAL FINDINGS OF FACT
27 CONCLUSIONS OF LAW AND ORDER

II

Section 9.11(a) of respondent's Regulation I provides that:

It shall be unlawful for any person to cause or permit the emission of an air contaminant or water vapor, including an air contaminant whose emission is not otherwise prohibited by this Regulation, if the air contaminant or water vapor causes detriment to the health, safety or welfare of any person, or causes damage to property or business. (emphasis supplied)

. . . .

Compare WAC 173-400-040(5).

"Air contaminant" is "dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof."

Section 1.07(b); RCW 70.94.030(1) (emphasis supplied). "Emission" is the "release into the outdoor atmosphere of air contaminants."

Section 1.07(j); RCW 70.94.030(8). Air Pollution is defined as:

. . . presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. Section 1.07(c). RCW 70.94.030(2). (emphasis supplied)

III

An odor unreasonably interferes with enjoyment of life and property if it causes "an unreasonable and substantial discomfort and annoyance to a person of ordinary and normal sensibilities." Cudahy Company v. Puget Sound Air Pollution Control Agency, PCHB No. 77-98 at Pages 10 and 19. Since we have found that the odor which emanated from the plant of the appellant on September 27, 1979, did cause an

FINAL FINDINGS OF FACT
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1 unreasonable and substantial discomfort and annoyance to persons of
2 ordinary and normal sensibilities it follows that appellant did
3 violate Section 9.11(a) of respondent's Regulation I as charged.

4 IV

5 The appellant had available to it, but did not take advantage of,
6 the relief of Section 9.16 of respondent's Regulation I which would
7 have prevented its odor from being deemed a violation, if it had been
8 caused by unforeseeable breakdown, and if the respondent had been
9 promptly and properly notified.

10 V

11 Appellant was previously found in violation of Section 9.11(a) in
12 case PCHB 1067, and was informed through the Order in that case of the
13 potential relief available under the provisions of Section 9.16.

4 VI

15 Any Finding of Fact which should be deemed Conclusion of Law is
16 hereby adopted as such.

17 Therefore, the Pollution Control Hearings Board issues this

18 ORDER

19 The \$250 civil penalty is affirmed, provided however, that \$100 of
20 the civil penalty is suspended on condition that appellant not violate
21 respondent's regulations for a period of one year after this Order
22 becomes final.

1 DATED this 14th day of April, 1980.

2 POLLUTION CONTROL HEARINGS BOARD

3
4 
5 NAT W. WASHINGTON, Chairman

6
7 
8 CHRIS SMITH, Member